

Senate Bill No. 973

Passed the Senate September 6, 2005

Secretary of the Senate

Passed the Assembly August 30, 2005

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 22007.5, 22171, 22650, 22651, 24300.6, 24307, 25000.9, 26002.5, 26140, 27400, and 27401 of the Education Code, to amend Sections 22771, 22775, 22818, and 22819 of, to add Sections 21291.5, 21626.5, and 31760.7 to, and to repeal Sections 22818.5, 22887, 22887.5, 22903, 22903.5, and 22929 of, the Government Code, and to amend Sections 1900, 1901, and 2351.5 of the Probate Code, relating to domestic partners, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 973, Kuehl. Public employees' retirement: domestic partners.

(1) For purposes of retirement benefits, the Teachers' Retirement Law provides that the term "spouse" includes a person who is the registered domestic partner of a member.

This bill would revise and recast those provisions to provide that a person who is the registered domestic partner of a member shall be treated in the same manner as a "spouse," and would make other conforming changes in that regard.

(2) Under the Teachers' Retirement Law, any member retiring from service may elect to receive his or her retirement allowance pursuant to specified options. A member may make a preretirement election by filing a form with the system's office in Sacramento within 30 days of the date of signature.

This bill would revise and recast those provisions to require the form to include the signature of the member's spouse or domestic partner, as specified, and be received at the system's headquarters, as provided.

(3) The Public Employees' Retirement Law requires a court to address certain community property issues and rights under the system upon the legal separation or dissolution of marriage of a member.

This bill would provide that a spouse or registered domestic partner who fails to meet specified criteria is prohibited from receiving a distribution until the member separates from employment.

The Public Employees' Retirement Law defines the term surviving spouse for the purpose of providing postretirement death benefits. These benefits are funded by the Public Employees' Retirement Fund, a continuously appropriated fund. Existing law extends the rights and duties of marriage to persons registered as domestic partners on and after January 1, 2005.

This bill would provide, for purposes of the provision of certain postretirement death benefits, that a surviving domestic partner shall be treated in the same manner as a surviving spouse if the domestic partner is in a registered domestic partnership that meets specified criteria or if the retired member and his or her domestic partner, who are currently in a registered domestic partnership, sign an affidavit that makes specified statements. Because moneys in the Public Employees' Retirement Fund would be used for a new purpose, this bill would make an appropriation.

(4) The Public Employees' Medical and Hospital Care Act authorizes the Board of Administration of the Public Employees' Retirement System to contract with carriers for health benefit plans and major medical plans for employees and annuitants, as defined, and approve other plans. The act defines domestic partnership for these purposes and provides that a domestic partner is a family member for specified purposes. The act permits certain persons who are eligible to enroll their domestic partners as family members in health plans, subject to collective bargaining, as specified. The act allows an employer to require an employee or annuitant to be responsible for certain increased costs or costs associated with covering the domestic partner, as specified. The act permits a contracting agency to offer health benefits to domestic partners of employees and annuitants at its option. The benefits provided under the act are funded by the Public Employees' Health Care Fund, a continuously appropriated fund.

This bill would revise and recast the provisions described above in connection with the extension of the rights and duties of marriage to domestic partnerships that occurred on and after 2005. Because moneys in the Public Employees' Health Care Fund would be used for a new purpose, this bill would make an appropriation.

(5) Under the County Employees Retirement Law of 1937, any member retiring from service may elect to receive his or her retirement allowance pursuant to specified options.

This bill would entitle a retired member and his or her domestic partner to the same entitlements as described above, if specified criteria are satisfied, including providing an affidavit signed by the member and domestic partner under penalty of perjury relative to the member's service retirement effective date or disability retirement date.

By expanding the scope of an existing crime, perjury, this bill would impose a state-mandated local program.

(6) Existing law specifies the capacity of a conservatee and the powers of a conservator and, among other things, provides that a conservatee retains the capacity to marry.

This bill would expand those provisions to provide that a conservatee retains the capacity to enter into a domestic partnership, as specified.

(7) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to ensure the proper implementation by California's public pension systems of Assembly Bill 205 (Chapter 421 of the Statutes of 2003), which provided domestic partners with many of the same rights and responsibilities as those currently held by spouses. Because of the gradual expansion of domestic partner rights under California law, some clarification is necessary in order to implement Assembly Bill 205 as it was intended and so as not to conflict with other statutes governing the administration of complex public employee benefit programs.

SEC. 2. Section 22007.5 of the Education Code is amended to read:

22007.5. Except as excluded by Sections 22661 and 23812, a person who is the registered domestic partner of a member, as established pursuant to Section 297 or 299.2 of the Family Code, shall be treated in the same manner as a “spouse,” as defined in Section 22171.

SEC. 3. Section 22171 of the Education Code is amended to read:

22171. (a) “Spouse” means a person who was continuously married to the member for the period beginning at least 12 months prior to the death of the member, unless a child is born to the member and his or her spouse within the 12-month period or unless the spouse is carrying the member’s unborn child.

(b) “Spouse” also means a person who was married to the member for less than 12 months, if the member’s death was either accidental, or due to an illness, and the marriage took place prior to the occurrence of the injury or diagnosis of the illness that resulted in death.

(1) A member’s death is defined as accidental only if he or she received bodily injuries through violent, external, or accidental means and died as a direct result of the bodily injuries and independent of all other causes.

(2) This subdivision does not apply if, at the time of the marriage, the member could not have reasonably been expected to live for 12 months.

(c) Except as excluded by Sections 22661 and 23812, a person who is the registered domestic partner of a member, as established pursuant to Section 297 or 299.2 of the Family Code, shall be treated in the same manner as a spouse.

SEC. 4. Section 22650 of the Education Code is amended to read:

22650. (a) This chapter establishes the power of a court in a dissolution of marriage or legal separation action with respect to community property rights in accounts with the plan under this part and establishes and defines the rights of nonmember spouses and nonmember registered domestic partners in the plan under this part.

(b) For purposes of this chapter, the termination, dissolution, or nullity of a registered domestic partnership, or the legal separation of partners in a registered domestic partnership, as provided in Section 299 of the Family Code, shall be treated in

the same manner as a dissolution of marriage or legal separation of a member and his or her spouse.

SEC. 5. Section 22651 of the Education Code is amended to read:

22651. (a) For purposes of this chapter and Section 23300, “nonmember spouse” means a member’s spouse or former spouse, and also includes a member’s registered domestic partner or former registered domestic partner, who is being or has been awarded a community property interest in the service credit, accumulated retirement contributions, accumulated Defined Benefit Supplement account balance, or benefits of the member under this part.

(b) For purposes of this chapter and Section 23300, a member’s registered domestic partner or former registered domestic partner who is being or has been awarded a community property interest in the service credit, accumulated retirement contributions, accumulated Defined Benefit Supplement account balance, or benefits of the member under this part shall be treated in the same manner as a nonmember spouse.

(c) A nonmember spouse shall not be considered a member based upon his or her receipt of any of the following being awarded to the nonmember spouse as a result of legal separation or dissolution of marriage:

(1) A separate account of service credit and accumulated retirement contributions, a retirement allowance, or an interest in the member’s retirement allowance under the Defined Benefit Program.

(2) A separate account based on the member’s Defined Benefit Supplement account balance, a retirement benefit, or an interest in the member’s retirement benefit under the Defined Benefit Supplement Program.

SEC. 6. Section 24300.6 of the Education Code is amended to read:

24300.6. (a) Any retired member who was unmarried and not in a registered domestic partnership on the effective date of retirement who did not elect an option pursuant to Section 24300, and who thereafter marries or registers in a domestic partnership, may, after the effective date of the member’s retirement under this part, elect an option described in paragraphs (1) to (6), inclusive, of subdivision (a) of Section 24300, naming his or her

new spouse or registered domestic partner as the option beneficiary, subject to all of the following:

(1) The retired member shall have been married or registered in a domestic partnership for at least one year prior to making the election of the option.

(2) The retired member shall notify the board, in writing on a form provided by the system, of the election of the option and the designation of the member's new spouse or registered domestic partner as the option beneficiary.

(3) The election of an option under this section is subject to approval by the board. A retired member may not elect a joint and survivor option that would result in any additional liability to the retirement fund. A retired member may not elect Option 8.

(4) The election shall be effective six months after the date the notification is received by the board, provided that both the retired member and the retired member's designated spouse or registered domestic partner are then living.

(b) The election of the option and designation of the option beneficiary under this section shall result in an actuarial modification of the member's retirement allowance that shall be payable through the life of the member and the member's new spouse or registered domestic partner. Modification of the member's retirement allowance pursuant to this section shall be based on the ages of the retired member and the retired member's new spouse or registered domestic partner as of the effective date of the election.

(c) This section shall be operative July 1, 2001.

SEC. 7. Section 24307 of the Education Code is amended to read:

24307. (a) A member who qualifies to apply for retirement under Section 24201 or 24203 may make a preretirement election of an option, as provided in Section 24300 without right of revocation or change after the effective date of retirement, except as provided in this part. The preretirement election of an option shall become effective as of the date of the member's signature on a properly executed form prescribed by the system, subject to the following requirements:

(1) The form includes the signature of the member's spouse or registered domestic partner, if applicable, the signature is dated,

and the date of the signature is within 30 days of the member's signature.

(2) The date the form is received at the system's headquarters office, as established pursuant to Section 22375, is within 30 days of the date of the member's signature and within 30 days of the date of the spouse or registered domestic partner's signature, if applicable.

(b) A member who makes a preretirement election of an Option 2, Option 3, Option 4, Option 5, Option 6, or Option 7 may subsequently make a preretirement election of Option 8. The member may retain the same option and the same option beneficiary as named in the prior preretirement election, as an option under Option 8.

(c) Upon the member's death prior to the effective date of retirement, the beneficiary who was designated under the option elected and who survives shall receive an allowance calculated under the option, under the assumption that the member retired for service pursuant to Chapter 27 (commencing with Section 24201) on the date of death. The payment of the allowance to the option beneficiary shall be in lieu of the family allowance provided in Section 23804, the payment provided in paragraph (1) of subdivision (a) of Section 23802, the survivor benefit allowance provided in Section 23854, and the payment provided in subdivisions (a) and (b) of Section 23852, except that if the beneficiary dies before all of the member's accumulated retirement contributions are paid, the balance, if any, shall be paid to the estate of the person last receiving or entitled to receive the allowance. The accumulated annuity deposit contributions and the death payment provided in Sections 23801 and 23851 shall be paid to the beneficiary in a lump sum.

(d) If the member subsequently retires for service, and the elected option has not been canceled pursuant to Section 24309, a modified service retirement allowance computed under Section 24300 and the option elected shall be paid.

(e) The amount of the service retirement allowance prior to applying the option factor shall be calculated as of the earlier of the member's age at death before retirement or age on the last day of the month in which the member requested service retirement be effective. The modification of the service retirement allowance under the option elected shall be based on

the ages of the member and the beneficiary designated under the option, as of the date the election was signed.

(f) A member who terminates the service retirement allowance pursuant to Section 24208 shall not be eligible to file a preretirement election of an option until one calendar year elapses from the date the allowance is terminated.

(g) The system shall inform members who are qualified to make a preretirement election of an option, through the annual statements of account, that the election of an option can be made.

(h) This section shall become operative on January 1, 2000.

SEC. 8. Section 25000.9 of the Education Code is amended to read:

25000.9. (a) For purposes of this chapter and Section 23300, “nonmember spouse” means a member’s spouse or former spouse who is being or has been awarded a community property interest in the service credit, accumulated retirement contributions, accumulated Defined Benefit Supplement account balance, or benefits of the member under this part.

(b) For purposes of this chapter and Section 23300, a member’s registered domestic partner or former registered domestic partner who is being or has been awarded a community property interest in the service credit, accumulated retirement contributions, accumulated Defined Benefit Supplement account balance, or benefits of the member under this part shall be treated in the same manner as a nonmember spouse.

(c) A nonmember spouse may not be considered a member based upon his or her receipt of any of the following being awarded to the nonmember spouse as a result of legal separation, dissolution of marriage, or dissolution of domestic partnership:

(1) A separate account of service credit and accumulated retirement contributions, a retirement allowance, or an interest in the member’s retirement allowance under the Defined Benefit Program.

(2) A separate account based on the member’s Defined Benefit Supplement account balance, a retirement benefit, or an interest in the member’s retirement benefit under the Defined Benefit Supplement Program.

SEC. 9. Section 26002.5 of the Education Code is amended to read:

26002.5. Except as excluded in Sections 26004 and 27406, a person who is the registered domestic partner of a member, as established pursuant to Section 297 or 299.2 of the Family Code, shall be treated in the same manner as a “spouse,” as defined in Section 26140.

SEC. 10. Section 26140 of the Education Code is amended to read:

26140. (a) “Spouse” means the person married to the participant on the date the participant files a beneficiary designation, or an application for a benefit, or on the date of the participant’s death.

(b) Except as excluded in Sections 26004 and 27406, a person who is the registered domestic partner of the participant, as established pursuant to Section 297 or 299.2 of the Family Code, on the date the participant files a beneficiary designation or an application for a benefit, or on the date of the participant’s death, shall be treated in the same manner as a spouse.

SEC. 11. Section 27400 of the Education Code is amended to read:

27400. (a) This chapter establishes the power of a court in a dissolution of marriage or legal separation action with respect to community property rights in benefits under this part and defines the rights of nonparticipant spouses in the Cash Balance Benefit Program.

(b) For purposes of this chapter, the termination, dissolution, or nullity of a registered domestic partnership, or the legal separation of partners in a registered domestic partnership, as provided in Section 299 of the Family Code, shall be treated in the same manner as a dissolution of marriage or legal separation of a member and his or her spouse.

SEC. 12. Section 27401 of the Education Code is amended to read:

27401. (a) For purposes of this chapter, “nonparticipant spouse” means a participant’s spouse or former spouse who is being or has been awarded a community property interest in the benefits determined by reference to the amounts credited to a participant’s employee and employer accounts or the participant’s annuity. A nonparticipant spouse who is awarded separate nominal accounts is not a participant in the Cash Balance Benefit Program. A nonparticipant spouse who receives

or is awarded an interest in a participant's annuity is not a participant in the Cash Balance Benefit Program.

(b) For purposes of this chapter, a participant's registered domestic partner or former registered domestic partner who is being or has been awarded a community property interest in the benefits determined by reference to the amounts credited to a participant's employee and employer accounts or the participant's annuity shall be treated in the same manner as a nonparticipant spouse.

SEC. 13. Section 21291.5 is added to the Government Code, to read:

21291.5. Notwithstanding any other provision of this article, a spouse or registered domestic partner who is not an alternate payee, as defined in Section 414(p)(8) of the Internal Revenue Code (26 U.S.C. Sec. 401 et seq.) shall not receive a distribution until the member separates from employment.

SEC. 14. Section 21626.5 is added to the Government Code, to read:

21626.5. For purposes of Section 21624, 21626, 21627, 21629, or 21630, a surviving domestic partner shall be treated in the same manner as a surviving spouse if either:

(a) The domestic partnership was registered for one year prior to the member's service retirement date or at the disability retirement date and continuously until the date of the member's death.

(b) The member retired prior to January 1, 2006, and both the member and his or her domestic partner, who currently are in a state-registered domestic partnership, sign an affidavit stating that, at the time prescribed by the retirement system for married spouses to qualify for survivor continuance, the member and the domestic partner would have qualified to be registered as domestic partners pursuant to Section 297 of the Family Code.

SEC. 15. Section 22771 of the Government Code is amended to read:

22771. A "domestic partnership" means either of the following:

(a) Two people who meet all of the criteria set forth in Section 297 or 299.2 of the Family Code.

(b) Two people who meet all of the criteria of a domestic partnership, as defined by the governing board of a contracting

agency, if the contracting agency adopted that definition prior to January 1, 2000.

SEC. 16. Section 22775 of the Government Code is amended to read:

22775. “Family member” means an employee’s or annuitant’s spouse or domestic partner and any unmarried child, including an adopted child, a stepchild, or recognized natural child. The board shall, by regulation, prescribe age limits and other conditions and limitations pertaining to unmarried children.

SEC. 17. Section 22818 of the Government Code is amended to read:

22818. (a) In order to receive any benefit provided by this part, an employee or annuitant shall provide, upon request of the board, any of the following:

(1) Proof in a manner designated by the board that the employee or annuitant and his or her domestic partner have filed a valid Declaration of Domestic Partnership pursuant to Section 298.5 of the Family Code or have established a valid domestic partnership, as defined by his or her contracting agency in accordance with subdivision (b) of Section 22771.

(2) A marriage certificate.

(3) A signed statement indicating that the employee or annuitant agrees that he or she may be required to reimburse the employer, the health benefit plan, and the system for any expenditures made for medical claims, processing fees, administrative expenses, and attorney’s fees on behalf of the family member, if any of the submitted documentation is found to be inaccurate or fraudulent.

(b) The employee or annuitant shall notify the employer or the board when a marriage is dissolved or a domestic partnership has terminated, as required by subdivision (c) of Section 299 of the Family Code, or as required by his or her contracting agency in accordance with subdivision (b) of Section 22771.

SEC. 18. Section 22818.5 of the Government Code is repealed.

SEC. 19. Section 22819 of the Government Code is amended to read:

22819. (a) A family member of a deceased employee of a contracting agency who is validly enrolled or is eligible for enrollment hereunder on the date of the employee’s death is

deemed to be an annuitant under Section 22760, pursuant to regulations prescribed by the board.

(b) A contracting agency shall remit the amounts required under Section 22901 as well as the total amount of the premium required from the employer and enrollees hereunder in accordance with regulations of the board. Enrollment of the annuitant and eligible family members shall be continuous following the death of the employee, or the effective date of enrollment, so long as the surviving family members meet the eligibility requirements of Section 22775 and regulations pertinent thereto. Failure to timely pay the required premiums and costs or the cancellation of coverage by the annuitant shall terminate coverage without the option to reenroll. The contracting agency may elect to require the family members to pay all or any part of the employer premium for enrollment.

(c) This section shall apply to a contracting agency only upon the filing with the board of a resolution of its governing board electing to be subject to this section.

SEC. 20. Section 22887 of the Government Code is repealed.

SEC. 21. Section 22887.5 of the Government Code is repealed.

SEC. 22. Section 22903 of the Government Code is repealed.

SEC. 23. Section 22903.5 of the Government Code is repealed.

SEC. 24. Section 22929 of the Government Code is repealed.

SEC. 25. Section 31760.7 is added to the Government Code, to read:

31760.7. (a) A retired member, in order to provide for his or her domestic partner, shall be entitled to elect or change any optional retirement allowance pursuant to this article, if all of the following criteria are satisfied:

(1) The member retired on or before January 1, 2006.

(2) At retirement, the member elected an unmodified retirement allowance or one of the optional settlements specified in this article naming his or her domestic partner as beneficiary.

(3) At the time of election under this section, the retired member and domestic partner are registered as domestic partners with the Secretary of State, and provide a copy of their Certificate of Registered Domestic Partnership to the retirement system.

(4) The retired member and domestic partner sign an affidavit under penalty of perjury stating that at least one year prior to the member's service retirement effective date or at the disability retirement date the member and partner would have qualified to be registered as domestic partners pursuant to Section 297 of the Family Code.

(b) The retirement system has no obligation to locate or otherwise contact retired members who may qualify for allowances under the terms of this section.

(c) Notwithstanding any other provision of this chapter, if a retired member elects to change his or her retirement election pursuant to this section, the member's allowance shall be adjusted prospectively only. The adjusted retirement allowance shall be effective on the first day of the month following receipt of the member's signed election. The member shall not be eligible to recover payment retroactively for any period between his or her retirement effective date and the date of election under this section.

(d) This section does not apply to members who are required to provide a continuing benefit to a former spouse pursuant to court order.

(e) The right of a member to make an election pursuant to this section shall expire on January 1, 2007.

SEC. 26. Section 1900 of the Probate Code is amended to read:

1900. The appointment of a conservator of the person or estate or both does not affect the capacity of the conservatee to marry or to enter into a registered domestic partnership.

SEC. 27. Section 1901 of the Probate Code is amended to read:

1901. (a) The court may by order determine whether the conservatee has the capacity to enter into a valid marriage, as provided in Part 1 (commencing with Section 300) of Division 3 of the Family Code, or to enter into a registered domestic partnership, as provided in Section 297 of the Family Code, at the time the order is made.

(b) A petition for an order under this section may be filed by the conservator of the person or estate or both, the conservatee, any relative or friend of the conservatee, or any interested person.

(c) Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

SEC. 28. Section 2351.5 of the Probate Code is amended to read:

2351.5. (a) Subject to subdivision (b):

(1) The limited conservator has the care, custody, and control of the limited conservatee.

(2) The limited conservator shall secure for the limited conservatee those habilitation or treatment, training, education, medical and psychological services, and social and vocational opportunity as appropriate and as will assist the limited conservatee in the development of maximum self-reliance and independence.

(b) A limited conservator does not have any of the following powers or controls over the limited conservatee unless those powers or controls are specifically requested in the petition for appointment of a limited conservator and granted by the court in its order appointing the limited conservator:

(1) To fix the residence or specific dwelling of the limited conservatee.

(2) Access to the confidential records and papers of the limited conservatee.

(3) To consent or withhold consent to the marriage of, or the entrance into a registered domestic partnership by, the limited conservatee.

(4) The right of the limited conservatee to contract.

(5) The power of the limited conservatee to give or withhold medical consent.

(6) The limited conservatee's right to control his or her own social and sexual contacts and relationships.

(7) Decisions concerning the education of the limited conservatee.

(c) Any limited conservator, the limited conservatee, or any relative or friend of the limited conservatee may apply by petition to the superior court of the county in which the proceedings are pending to have the limited conservatorship modified by the elimination or addition of any of the powers which must be specifically granted to the limited conservator pursuant to subdivision (b). The petition shall state the facts

alleged to establish that the limited conservatorship should be modified. The granting or elimination of those powers is discretionary with the court. Notice of the hearing on the petition shall be given for the period and in the manner provided in Chapter 3 (commencing with Section 1460) of Part 1.

(d) The limited conservator or any relative or friend of the limited conservatee may appear and oppose the petition. The court shall hear and determine the matter according to the laws and procedures relating to the trial of civil actions, including trial by jury if demanded. If any of the powers which must be specifically granted to the limited conservator pursuant to subdivision (b) are granted or eliminated, new letters of limited conservatorship shall be issued reflecting the change in the limited conservator's powers.

SEC. 29. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2005

Governor